



**Permanency for California
Children in Foster Care**

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permanency. Sometimes, a relative or foster parent does not want to adopt or become a legal guardian, but can truly make a commitment to care for a child on a permanent basis. In other cases, the caregiver cannot keep the child permanently, but can urge the professionals in the system to look for a permanent home for the child. This may include talking to social workers, CASAs, attorneys and the court about the child's need for permanency. Children with a permanent plan of long term foster care are especially vulnerable to ending up without a permanent, caring adult in their lives. Many foster parents and relatives solve this dilemma by maintaining contact with children long after they exit the foster care system.

Making Permanency Real

In nearly every case, the child's foster or kinship caregiver has unique insights into what a child needs and what kind of permanent situation would serve the child's best interest. Making sure that others in the system pay attention to the child's need for a permanent home, providing insight into the kind of home a child needs, and being willing to become a permanent parent for the child all support the child's need for permanency. Regardless of the permanent plan option a court chooses in a particular situation, all children need a caring, supportive relationship with an adult caregiver. Foster and kinship parents make permanency a reality for children who cannot return to their parents. In keeping with this important role, caregivers should offer their input and expertise to agency and court decision makers so that the very best decision about a permanent home can be made for each child.



When a child is placed in guardianship with a relative, the relative may be eligible for Kinship Guardianship Assistance Payments (Kin-GAP). This is a special program for relatives who become legal guardians that allows payments to continue after the child's court case is closed. Detailed information on KinGAP in California is available from the National Center for Youth Law at: www.youthlaw.org/downloads/KGManual.pdf

Foster and Kinship Parent Role in Legal Guardianship as a Permanent Plan Option

Relatives sometimes feel uncomfortable adopting the foster child in their home and would rather become legal guardians. Since legal guardianship does not terminate the rights of the child's parents, it allows guardians to provide stability and care for the child without becoming adoptive parents. In other cases, a foster youth may prefer legal guardianship over adoption by her long term foster parents. In that case, the youth has the benefits of a stable home while retaining a legal connection to her birth family. Foster and kinship parents should be aware that guardianships can be terminated and that the guardianship ends when the child turns 18 or finishes high school. Financial payments can continue during legal guardianship. Caregivers should ask their social worker to explain what services and funding will be available to them if they become legal guardians.

Long Term Foster Care

When all other permanent plans have been explored and ruled out, the court may decide on long term foster care as the permanent plan for the child. Because it is the least permanent plan, the agency and the court also explore more permanent plans for the child at each permanency hearing. This permanent plan can be chosen only if the agency has documented a compelling reason that it is not in the child's best interest to hold a TPR hearing because it is not appropriate for the child to be adopted and there is no one to take legal guardianship of the child. [Welf. & Inst. Code § 366.21(g)(3)] Since having a stable, permanent home is the long term goal for each child, the court may decide to place the child permanently in the home of a relative or may decide to place the child in a specific foster home with a goal of moving to a more permanent plan (return home, adoption, etc.) in the future.

Foster and Kinship Parent Role in Long Term Foster Care as a Permanent Plan Option

Foster and kinship parents who are caring for a child on a long term basis need to think carefully about how they can help the child achieve

Permanency for California Children in Foster Care

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Dedication

This series of informational Toolkits is dedicated to the foster, kinship, and adoptive families that open their homes and hearts to the children in California's foster care system. We gratefully acknowledge the importance of their contributions to the lives of the children in their homes and their public service to improve the well-being of the vulnerable children in our communities.

Foster and kinship parents who adopt a child may be eligible for an adoption subsidy. An adoption subsidy is a payment some adoptive families receive when they adopt a child who meets the criteria for receiving payments through the adoption assistance program (AAP). AAP is a negotiated agreement between the agency and the foster or kinship family. AAP payments are reassessed every 2 years, although adoptive parents can ask for a reassessment at any time if there is a change in the child's needs. Detailed information on AAP in California is available from Sierra Adoption Services' AAP Education and Advocacy Project at: <http://www.AAPhelp.org>

Legal Guardianship

When children cannot return home, and adoption has been ruled out as an appropriate permanent plan, legal guardianship can offer safety and stability for many children. If the court rules that legal guardianship is the appropriate permanent plan for the child, it must appoint a guardian and issue *letters of guardianship* (legal papers that give the guardian certain legal rights over the child). [Welf. & Inst. Code § 366.26(d)] Guardianship is different from adoption. Guardianship *suspends*, but does not terminate, parental rights. A guardian must provide care and control over the child until the child is 18 or the guardianship is terminated by the court. A child can still inherit from her parents if a guardianship exists. The court may also order visits with parents or other relatives as part of a guardianship. (More information on legal guardianship is available in a *Guardianship Pamphlet* (JV-350) at: www.courtinfo.ca.gov).



Legal guardianship must be given preference over long-term foster care when it is in the best interest of the child and there is a guardian available, **but** the child cannot be removed from a foster parent or relative who can provide a stable, permanent home for the child, if the child has substantial psychological ties to her caregiver and the court finds that removing the child would be seriously detrimental to her emotional well-being. [Cal. Rule of Court 1463(e)(6)].

Foster and Kinship Parent Role in Adoption as a Permanent Plan Option

Foster and kinship parents are by far the most likely people to adopt children in foster care who cannot return to their parents.⁴ Because concurrent planning requires agencies to have an alternate permanent plan to reunification for each child in foster care, many social workers ask foster and kinship parents if they are willing to make a permanent commitment to adopt the child if reunification fails. Foster and kinship parents should tell their social worker early on if they are willing to adopt the child. Caregivers can also let the child's attorney and CASA (if the child has one) know that they are potential adoptive parents, if the child needs them. Caregivers can use the *Caregiver Information Form* (JV-290) available at www.courtinfo.ca.gov and on the LAPP website at www.LAPPonline.org to let the court know that they are willing to adopt the child at the appropriate time in the case. In general, courts are more interested in learning whether the child's caregiver is willing to adopt once reunification services to the child's parents have ended. Caregivers should be careful not to thwart reunification efforts by focusing on adopting the child very early on in the case. In some cases, prospective adoptive parents may want to file a request with the court to become *de facto* parents. (For more information on de facto parent status, see the LAPP Toolkit titled *De Facto Parent Status for California Foster and Kinship Caregivers*).

Once parental rights are terminated, foster and kinship caregivers may request that the court designate them as prospective adoptive parents. If the caregiver has already been designated or is eligible to be designated, the child welfare agency may not move the child from the caregiver's home without giving the caregiver, the child, and the child's attorney the chance to ask the juvenile court to decide if the move is in the child's best interests. [Welf. & Inst. Code §366.26(n)]. (For more information on becoming a court-designated prospective adoptive parent, see the Toolkit titled *Court Motions for California Caregiver Families* or visit the LAPP website at: www.LAPPonline.org

⁴ In fiscal year 2001, national AFCARS data shows that 59% of children adopted from foster care in the United States were adopted by their foster parents, and 23% were adopted by relatives. See U.S. Department of Health and Human Services, Administration for Children and Families, Administration for Children, Youth and Families, Children's Bureau, AFCARS report.

Permanency for California Children in Foster Care



All children need and deserve a nurturing, loving family to care for them. When children cannot return home to their parents, foster and kinship families are the most likely people to provide permanent homes for them. This Toolkit provides a summary of California laws and procedures to ensure that each foster child has a permanent, stable home within legal time limits. Foster and kinship parents play an important role by helping others in the foster care system understand the child's unique needs and by being available to provide a permanent, loving home for a child who cannot return to his parents.

Reasonable Efforts

California and federal law requires county child welfare agencies to make *reasonable efforts* (efforts that are sensible under the circumstances) to provide services to families to avoid removing children from their homes. In most cases, agencies also need to make reasonable efforts to return a child home within certain timeframes, if the child can safely be reunified with her parents. If the child cannot safely return home, agencies are required to make reasonable efforts to finalize another permanent plan for the child. The reasonable efforts requirements are intended to make removal a last resort, to encourage child welfare agencies to work to reunify families, and to find safe, permanent homes for children who cannot return to their

parents within the timeframes allowed by the law.

Concurrent Planning

In order to make sure that a child does not have to wait for a permanent home if she cannot return home to her parents, child welfare agencies in California are required to engage in *concurrent planning*. Concurrent planning is the process of having two simultaneous plans for a child's future: one to reunify her with her parents and another for an alternate permanent home if she cannot return to her parents. The case plan¹ that the child welfare agency presents to the court for approval must include information on the services the agency is providing to achieve legal permanency for the child if reunification efforts fail, and on the desire and ability of the child's foster or kinship parents to provide legal permanency for the child if reunification is not successful. [Welf. & Inst. Code § 16501.1 (f)(9)].

Permanency Timelines

Permanency Hearing No Later Than 12 Months

Children in foster care need to return home to their parents or find some other permanent living arrangement within a reasonable period of time. A child's need for permanency and stability is critical to her well-being. The federal Adoption and Safe Families Act (ASFA), passed by Congress in 1997, requires courts throughout the country to hold a permanency hearing for each child in foster care within 12 months from the date the child entered foster care.²

Permanency hearings must be held on a yearly basis after that.

At the permanency hearing, the court must adopt a permanent plan for the child. [42 U.S.C. § 675(5)(C) and (F); Welf. & Inst. Code § 366.21(f)].



¹ The case plan is the child welfare agency's plan that lays out what activities the agency, the child's birth parents, and the child are responsible for. The case plan is attached to the social study report, a report the social worker prepares for court hearings.

² The legal "date entered foster care" is the date of the first court finding of abuse or neglect (the jurisdiction hearing in California) or 60 days after the child was physically removed from her home, whichever is earlier [Welf. & Inst. Code § 361.5(a)].

Foster and Kinship Parent Role in Return Home as a Permanent Plan Option

Foster and kinship parents can play a key role in helping parents reunify with their children. Child welfare agencies encourage foster and kinship parents to work together with the child's birth parents in most cases. Caregivers should talk with their social worker about what the permanent plan for the child is, what role they are expected to play in reunification and make sure they are clear about any requirements the agency has for them. Developing a positive relationship with a child's birth parents benefits the child, the foster or kinship family, and the birth family. For this reason, many agencies in California use a "Family to Family" model that encourages contact between a child's birth parents and her foster or kinship parents. This model also emphasizes actively including foster and kinship parents in a team approach to caring for the child, rather than having a child's caregivers take a "backseat" role.

In addition, foster and kinship parents are an important source of support for the child during the reunification period. It is important that caregivers understand the conflicting loyalties and feelings of loss that children in foster care experience. Helping the child understand what is happening to them eases the fear and anxiety children inevitably experience who are removed from their parents.

Adoption

Adoption provides a child with the most permanent legal plan if she cannot return to her parents. Courts look at whether a child can be adopted before exploring less permanent plans. Once the court has adopted a permanent plan of adoption for the child, **and** a child is freed from her parent's custody by a termination of parental rights, the child's foster or kinship parents have a preference in adopting that child. A *preference* means that the foster or kinship parent's application for adoption will be considered over all other applications, if the child has substantial emotional ties to her foster or kinship parent(s) and removing the child from her caregivers would be seriously detrimental (harmful) to the child's emotional well-being. [Welf.



- Return Home
- Adoption
- Legal Guardianship
- Long Term Foster Care

The court must consider the most legally permanent home for the child before considering other permanent plan options (e.g., the court first considers return home, then adoption, then legal guardianship, etc.)

Return Home

The most preferred permanent plan for children in foster care is to return home to their parents. At the first six-month review hearing and the permanency hearing that takes place 12 months after the date the child entered foster care, the court must order that the child be returned to her parents **unless** the judge finds that returning the child home would create a “substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.” If a child’s parents have not regularly participated and made progress in the activities that were ordered in their case plan, that is *prima facie evidence* (sufficient to establish as a fact if it is not proven otherwise) that it would be detrimental to the child to return to her parents. [Welf. & Inst. Code § 366.21(e) & (f)].



At the first permanency hearing held 12 months after the date the child entered foster care, the court can order the agency to provide additional reunification services to a child’s parents **if** the court finds that there is a “substantial probability” that the child can return home to her parents by the 18 month hearing. Otherwise, the court will order some other permanent plan for the child at the permanency hearing. [Welf. & Inst. Code § 366.21(g) (1)].

(See information below on permanent plan options for children in foster care).

No Reunification Services in Some Cases/ Permanency Hearing Held More Quickly

In some very serious cases, no reasonable efforts to return the child to her parents are made, and the court holds a permanency hearing early on in the case at the same time as the disposition hearing (which is held within 60 days after the first court hearing in the case). In most cases, though, the court will order the agency to provide reunification services to the child’s parents. [Welf. & Inst. Code § 361.5]. (For more information on specific juvenile court dependency hearings, see *Caregivers and the Courts: A Primer on Juvenile Dependency Proceedings for California Foster Parents and Relative Caregivers* at www.courtinfo.ca.gov or on the LAPP website at www.LAPPonline.org).

Shortened Timeframes for Children under Age 3

Shortened timeframes may apply for a child who is under 3 years old (or a sibling group where one of the children is under 3 years old) on the date the child is removed from her parents. For those children, the court may limit reunification services for the child’s birth parents to 6 months from the date the child entered foster care. [Welf. & Inst. Code § 361.5(a)(2)].

Filing of Petition to Terminate Parental Rights (TPR)

In order to continue to receive federal funding for foster care cases, child welfare agencies in California must file a petition for *termination of parental rights*³ when a child has been in foster care for 15 out of the last 22 months **unless**:

- the child is living with a relative; **or**
- the agency has documented a compelling reason that it is not in the child’s best interest to file the petition; **or**
- the agency has not provided reasonable efforts so that the child can safely return home.

These are very broad exceptions and many foster children will not have a petition filed to terminate their parents’ rights even though they have been in foster care for a long period of time. [42 U.S.C. § 675(5)(E)].

³ Termination of parental rights is often referred to as a “TPR.” Termination of parental rights is the formal legal severing of the parental relationship between a child and her parents.

Exception to Preference for TPR When a Relative/Foster Parent is Unable to Adopt

There is an exception to the preference to terminate parental rights for a child who cannot return home, when the child is living with a relative or foster parent who:

- 1) Is unable or unwilling to adopt the child because of *exceptional circumstances* (these can't include being unwilling to accept legal or financial responsibility for the child); **and**
- 2) Is willing and capable of providing a stable and permanent home for the child; **and**
- 3) Removing the child from the relative or foster parent's home would be detrimental to the child's emotional well-being.

This exception doesn't apply if the child is living with a foster parent and is under 6 years old (or is part of sibling group where one of the children is under 6 years old) and the sibling group needs to have a permanent home together. [Welf. & Inst. Code § 366.26(c)(1)(D)].

Other Exceptions to TPR

The law allows some other exceptions to a termination of parental rights, so that a child can be adopted, when it would be detrimental to the child to terminate her parents' rights. If the child welfare agency did not provide reasonable reunification services to the child's parents, the court may not terminate the parents' rights. [Welf. & Inst. Code § 366.26(c)(2)]. Other reasons a court may decide not to terminate parental rights include:

- The parent has maintained regular visits and contact with the child **and** the child would benefit from continuing the relationship with the parent. [Welf. & Inst. Code § 366.26(c)(1)(A)]. For this exception to apply, however, the parent must show that the strength and quality of the parent-child relationship outweighs the security and sense of belonging that a new adoptive family would offer the child. [*In re Autumn H.* (1994) 27 Cal. App 4th 567, 32 Cal. Rptr. 2d 535].
- The child is 12 years old or older and doesn't want his parent's rights to be terminated. [Welf. & Inst. Code § 366.26(c)(1)(B)]
- The child is in a residential treatment facility, adoption is unlikely or undesirable, and continuing the parents' rights will

not prevent finding the child a permanent family if the parents cannot take the child when residential care ends. [Welf. & Inst. Code § 366.26(c)(1)(C)]

- There would be a substantial interference with a sibling relationship if the child was adopted, taking into consideration the nature and extent of the relationship, and other factors, including:
 - 1) Whether the child was raised with a sibling group in the same home;
 - 2) Whether the child shared significant common experiences or has existing close and strong ties with a sibling;
 - 3) Whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, compared with the benefits of being adopted. [Welf. & Inst. Code § 366.26(c)(1)(E)]

(For more information on your foster child's sibling relationships, see LAPP's informational Toolkit titled *Your California Foster Child's Sibling Relationships*).

Reasonable Efforts to Finalize the Permanent Plan Must Continue

Once the court has adopted a permanent plan for the child at the permanency hearing, the agency must make reasonable efforts to complete whatever steps are necessary to finalize the plan. (e.g. If the plan is for the child to be adopted, the agency must take steps to see that the adoption is finalized). At each successive review hearing, the court must make a finding that the agency acted reasonably in trying to finalize the permanent plan for the child. [Welf. & Inst. Code § 366.21(f); Welf. & Inst. Code § 366.22(a); Welf. & Inst. Code § 366(a) (1) (b)].

Reinstatement of Parental Rights after Three Years

Parental rights may be reinstated if a child has not been adopted after at least three years, the child requests that the court reinstate his parents' rights, and the court decides that reinstatement of parental rights is in the child's best interests. [Welf. & Inst. Code § 366.26(i)(2)].

Permanent Plan Options

At the permanency hearing, the court must order a permanent plan for the child. There are four possible permanent plans the court can order under California law. They are: